

REPORT NO. R03-0585
December 16, 2003

REPORT RE:

**OPTIONS FOR REGULATING THE
DEVELOPMENT OF SUPERSTORES**

Housing, Community & Economic Development Committee
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

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Planning & Land Use Management Committee
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

(Council File 00-1675-S2 not transmitted herewith)

Honorable Members:

The City Attorney's Office transmits this report to assist the Committees and Council in framing their discussion of the research, analysis and public hearings conducted regarding the issue of regulating big box retail or superstores¹ development. This report identifies three sets of policy choices the Committees should consider in crafting a regulatory approach: (1) defining the focus of regulation, i.e. which uses should be subject to additional development restrictions; (2) deciding on the geographic scope of the regulation; and (3) determining the form of regulation.

¹Academics, researchers and planners variously refer to large retail stores as "big box" stores, "supercenters" or "superstores." For clarity and ease of reference, this report shall use the term "superstore" to refer to large stores combining retail and grocery sales as distinguished from the term "big box" stores, which refers to all large retail stores regardless of whether grocery sales are included under the same roof.

Based on our legal analysis and review of the record, the City Attorney's Office recommends the adoption of an ordinance prohibiting superstore development in Economic Assistance Areas. Superstores would be defined as stores greater than 100,000 square feet which combine retail and grocery sales and which devote more than 10% of sales floor area to the sale of non-taxable merchandise. Wholesale and membership clubs selling primarily bulk merchandise would be excluded. Economic Assistance Areas would be defined as areas encompassing all Community Redevelopment Agency project areas, State and Federal Enterprise Zones, the Empowerment Zone and Renewal Community, and a one-mile radius buffer from these zones. Prohibiting superstores in Economic Assistance Areas would address the particular land use impacts associated with very large combined retail and grocery sales and protect the City's substantial direct and indirect investment in the revitalization and planning of the communities within Economic Assistance Areas.

This report is based on a review of the *Final Report on Research for Big Box Retail/Superstore Ordinance* by Rodino Associates ("Rodino Report"), industry and academic studies, and an analysis of regulations adopted by other jurisdictions in response to the impacts caused by big box retail and superstore development.

I. BACKGROUND

The City currently regulates large retail stores with 100,000 square feet or more of gross floor area by requiring a conditional use permit in the C2, C4, C5, CM, M1, M2, and M3 zones consistent with findings and design guidelines adopted by the City Planning Commission. The existing ordinance is aimed at mitigating the land use impacts of big box retail development within commercial and manufacturing zones, but does not address the particular land use, environmental and economic impacts associated with superstores, which combine retail and grocery sales within one enormous establishment.

In March 2003, the City Council authorized the Community Development Department (CDD) to retain a consultant to assist CDD and the City Attorney's Office in compiling and analyzing background material necessary to draft an ordinance regulating superstore development. CDD retained Rodino Associates and with their assistance conducted two public hearings on the issue. Rodino Associates surveyed available studies and literature and reviewed testimony from the hearings to recommend the appropriate definition to use in a new ordinance, summarized the impacts of big box and superstore development, suggested measures to mitigate those impacts and outlined a procedure for reviewing and analyzing superstore development

proposals in Economic Assistance Areas. The Rodino Report and this report are the

products of this enterprise.

II. MAJOR IMPACTS OF SUPERSTORES

A. Land Use, Traffic, Environmental and Design Impacts

The land use and other environmental impacts associated with superstore development are well documented in studies from across the country. Superstores are characterized as typically windowless, rectangular, single-story buildings with drab standardized facades. They rely on auto-borne shoppers and require acres of surrounding parking. Superstores have unique potential to profoundly disrupt land use patterns because they offer discount retail and full-service grocery retail under one roof. This threatens traditional supermarkets which often anchor neighborhood shopping centers. As a result, the adjacent development of a superstore may potentially threaten the viability of entire commercial districts.

In addition, superstores create particularly high transportation impacts because of the frequency of grocery trips combined with the huge scale of their general merchandise operations. The typical household makes more frequent trips to the grocery store than to a general retail store or to warehouse membership clubs, which primarily sell a limited range of bulk food items. Traffic generation studies indicate that superstores are likely to generate more traffic on a daily or weekly basis than other types of large stores.² This increase in trips increases traffic congestion and air pollution,³ while the acres of parking required to support auto-borne shoppers increase the urban heat-island effect and generate increased amounts of polluted runoff from parking lots.⁴

B. Economic Assistance Areas

The City of Los Angeles has maintained a long-standing and unwavering commitment to revitalizing and eliminating blight in the City's poorest communities by leveraging State and Federal tax credits, economic incentives and the City's own direct

² Report to the Community and Economic Development Agency of the City of Oakland by the Office of the City Manager, An Ordinance Amending the Oakland Planning Code to Define "Large-Scale Combined Retail and Grocery Sales Commercial Activity," September 23, 2003.

³ *Slam dunking Wal-Mart!* (1999) By: Al Norman, p. 18, citing a study by Brian Ketcham, published in a 1995 edition of "Metro Planner", the newsletter of the American Planning Association.

⁴ "The High Cost of Free Parking", 1000 Friends of Wisconsin and the Land Use Institute.

and indirect investment. These programs and initiatives target geographically defined areas including five State Enterprise Zones, two Federal Enterprise Zones, an Empowerment Zone, a Renewal Community and 37 Community Redevelopment Agency Project Areas (collectively, "Economic Assistance Areas"). The City, State and Federal governments created Economic Assistance Areas to eliminate blight, encourage private investment, and revitalize community economic activity. Combined, all three levels of government have expended hundreds of millions of dollars to achieve these economic assistance goals.

Economic Assistance Areas catalyze the development of robust and healthy communities. They aim to provide people with opportunities to obtain stable, good paying jobs and to give individuals the prospect to better their lives in the future, "enjoy the environment of their work, have confidence in the intention of their companies to protect their jobs, embrace self improvement and attainment of better education as a vehicle for such improvement, and have greater economic involvement in their own community by spending more in their own community for a more sustained path of economic growth."⁵

The City provides direct and indirect support to Economic Assistance Areas through grants, loans, tax credits, reinvestment of tax increment funds, facade improvement programs, infrastructure improvements and the implementation and enforcement of focused planning efforts such as designs for development in redevelopment project areas.

Superstores may cause substantial disruption to revitalization and planning efforts in Economic Assistance Areas by driving out existing grocery stores that often anchor the neighborhood shopping centers that are the focus of commercial activity in these communities. The Rodino Report discusses evidence from locales as diverse as Dallas, Texas, the State of Mississippi, and Toronto, Canada, demonstrating the impact of superstores on existing grocery stores. In many communities, supermarkets anchor local commercial districts and shopping centers by allowing local residents to buy day-to-day essentials and encouraging patronage of other nearby local businesses. Numerous studies indicate that the single greatest loss from traditional grocery stores is due to the superstore configuration of grouping discount retail and full-service grocery shopping

⁵ *A Position Paper, Revitalization Zones and the Necessity of Protecting Good Paying Jobs: A Brief Review of Some of the Existing Evidence*, Jamshid Damooei, Ph.D., Professor of Economics and Co-Director of Center for Leadership and Values, California Lutheran University.

and in fact, many of the 100+ articles in this special issue are devoted to the study of the role of the teacher in the classroom. The authors of these articles are from a variety of disciplines, including education, psychology, sociology, and business. The articles in this special issue are organized into three sections: (1) The Role of the Teacher in the Classroom, (2) The Role of the Teacher in the School, and (3) The Role of the Teacher in the Community. The first section, "The Role of the Teacher in the Classroom," contains five articles that focus on the role of the teacher in the classroom. The second section, "The Role of the Teacher in the School," contains three articles that focus on the role of the teacher in the school. The third section, "The Role of the Teacher in the Community," contains two articles that focus on the role of the teacher in the community.

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under one roof.⁶ Superstores draw customers away from traditional supermarkets, thus threatening the viability of entire local shopping areas. If superstores succeed in eliminating neighborhood supermarkets and grocers, the resultant shuttering of local shopping centers could cause a resurgence of the persistent urban blight that Economic Assistance Areas are designed to combat.

The Rodino Report also notes the damaging practice of superstores negotiating leases that permit them to “go dark,” i.e. vacate a location, while maintaining the lease on big box structures and parking areas. This facilitates a pattern of superstores locating in a community, engaging in predatory pricing that drives out competitors, consolidating their operations by shutting down stores once competition is eliminated and then tying up the massive parcels they have assembled through long-term leases that prevent the reestablishment of rival retailers and the recycling of scarce industrial and commercial land. This ultimately results in declining property values for the surrounding community as a hulking vacant structure sits on an enormous parcel attracting graffiti and debris.

The Rodino Report focuses particular attention on the tendency of superstores to drive down wages and benefits in the communities in which they locate. Superstores may increase the ranks of the working poor by paying low wages and providing very limited health care benefits, thus further burdening already strained local social service and health care systems.

C. Regulatory Approaches in Other Jurisdictions

A number of jurisdictions throughout the United States have adopted ordinances controlling development of big box retail/superstores. These ordinances range from restricting the location of these retailers to outright prohibitions. Oakland has become the latest California community to regulate these uses by banning “Large-Scale Combined Retail and Grocery Sales” establishments whose total sales floor exceeds 100,000 square feet and which devote more than 10% of sales floor area to the sale of non-taxable merchandise. An ordinance is pending before the San Diego City Council which would prohibit development of superstores that are greater than 130,000 square feet and which stock more than 30,000 Stock-keeping Units, of which at least 10% are non-taxable items. Bozeman, Montana and Coconino County, Arizona have both adopted size restrictions. The Rodino Report describes regulatory efforts in several other jurisdictions.

⁶ *Economic Analysis of the Proposed Fremont Wal-Mart: Short and Long Term Impacts on Retail and Economic Development*, Prepared for The United Food and Commercial Workers Union Food and Commercial Workers Union, Local 870 by Strategic Economics (March 2003).

III. KEY POLICY OPTIONS FOR CONSIDERATION

A. Defining the Focus of Regulation

In devising a big box or superstore ordinance, the Committees must decide the threshold question of the use to be regulated in terms of store size and/or product mix. Big box retail/superstores are generally characterized by large windowless rectangular single-story buildings, standardized facades, reliance on auto-borne shoppers, acres of parking, and no-frills site development without community or pedestrian amenities. Depending on its location, a big box retail/superstore can range from 50,000 to 1,000,000 square feet in size and offer a product mix including general retail, non-taxable (grocery) or bulk merchandise. The City Attorney's Office suggests the Committees consider the following three options:

1. Retail Facility Larger than 75,000 Square Feet of Gross Buildable Area, Selling Goods to the General Public

This definition measures size and is the easiest to determine. It will not however, identify the type of inventory carried since it incorporates all retail types including groceries, clothing and home improvement merchandise. This definition is very broad and would apply to most large retail stores including warehouse clubs like Sam's Club, discount stores such as Wal-Mart, home improvement centers similar to Home Depot and superstores comparable to Target. This definition might also include some supermarkets. The Rodino Report recommends this definition.

2. Retail Facility Larger than 100,000 Square Feet with More Than 10% of the Gross Floor Area Devoted to Non-Taxable Merchandise (Groceries), Excluding Membership Clubs

This definition incorporates both store floor area, inventory size, and composition. It will apply to superstores such as Wal-Mart Superstores and Target Superstores. It would exclude wholesale clubs or other establishments selling primarily bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic fee. These exclusions would focus the regulation on the superstore uses that generate particularly high traffic congestion and air quality impacts and which have the most significant potential to undermine economic revitalization efforts. The City Attorney recommends adoption of this definition.

3. Retail Facility Exceeding 150,000 Square Feet with 20,000 or Greater Non-Taxable Stock-Keeping Units

This definition unites store floor area and Stock-keeping Units (“SKU”) to describes the retailer’s inventory. This definition would capture a very limited universe of stores, principally Super Wal-Mart and possibly Super Target. It would exclude Costco and other bulk merchandise or warehouse clubs, because these stores carry a relatively small number of SKUs (3,500 to 4,500). It would also exclude most supermarkets, because although they carry about 25,000 SKUs, they generally do not exceed 150,000 square feet in size. Employing this definition would require retailers to periodically provide the City with SKU data. This would require review and monitoring by City staff.

B. Defining the Geographic Scope of the Regulation

The City of Los Angeles contains a diversity of communities and land use zones and faces uneven development of its commercial centers. As a result, the Committees may wish to consider tailoring the geographic application of an ordinance to account for this diversity. City Attorney’s Office recommends consideration of the following options:

1. Citywide Application

The Committees may wish to apply the regulation uniformly across all Economic Assistance Areas and land use zones.

2. Apply To Economic Assistance Areas, Including a One-Mile Buffer Surrounding Each Zone

By applying the regulation only to Economic Assistance Areas, the City could address the land use and environmental impacts caused by superstores while buttressing the City’s efforts to economically revitalize and enhance community planning in the City’s poorest neighborhoods. Including a one-mile buffer around each zone would further protect the integrity of community planning efforts and prevent developers from locating superstores just outside the border of each Economic Assistance Area and thus undermining the City’s direct and indirect investments in these communities. Limiting application of the regulation recognizes the economic diversity of the City’s commercial areas. The City Attorney recommends adopting this geographic approach.

3. Apply the Regulation to C2, C4, C5, CM, M1, M2, and M3 Zones

This approach would build on the existing zoning regulations on big box stores exceeding 100,000 square feet by focusing primarily on the land use impacts associated with development in certain commercial and manufacturing zones of Los Angeles. It would

not distinguish between areas facing differing levels of economic development challenges and would have roughly the same affect as a citywide application.

C. Determining the Form of Regulation

Ordinances controlling big box retail and superstore development cover the entire spectrum from size regulations, requiring conditional use permits, to wholesale prohibition. The City Attorney's Office recommends consideration of the following regulatory approaches:

1. Prohibit Development of Superstores Within Economic Assistance Areas

The Rodino Report and the studies, articles and other materials contained in the record document the land use, environmental and economic impacts of superstores. Economic Assistance Areas are by definition the most economically vulnerable areas within the City and thus are the most susceptible to the destabilizing effects of superstore development. Allowing superstores to undermine the vitality of community shopping districts and disrupt local land use patterns would negate decades of focused economic revitalization programs and planning efforts by the City. A complete prohibition of superstore development within Economic Assistance Areas is the simplest and most direct means of preserving economic stability, protecting tax revenues and promoting the general welfare of these communities. The City Attorney recommends adopting this regulatory approach.

2. Requiring Developer Mitigation Within Economic Assistance Areas

Under this approach, superstore developers, in cooperation with CDD, would conduct a community impact assessment analyzing the employment, retail, municipal revenue, property value, consumer choice, land use and urban design impacts of a proposed superstore development. CDD would then require the developer to undertake measures designed to mitigate negative impacts anticipated by the community impact assessment. Mitigation measures might include mitigation fees, agreements to re-lease closed superstore facilities, superstore-sponsored efforts to promote local hiring, imposing a living wage requirement for workers employed at the superstore, or requiring superstores to provide financial assistance to negatively affected local retailers. This approach would require City staff to review the community impact assessments and devise mitigation measures. The Rodino Report outlines a suggested development application and review process to implement this approach.

**3. Maintain or Enhance Existing Regulations Requiring
Conditional Use Permits in the C2, C4, C5, CM, M1, M2, and M3
Zones**

The municipal code currently requires a conditional use permit for the development of retail stores exceeding 100,000 square feet within certain land use zones in the City. These procedures could be enhanced to require additional findings or mitigation measures to address the particular land use impacts caused by superstores.

CONCLUSION

The City Attorney remains committed to assisting the City Council in devising a regulatory scheme that will preserve the economic vitality of our commercial districts, while encouraging well-designed development that is sensitive to the needs of our neighborhoods. Please direct any questions regarding recommendations contained in this report to Assistant City Attorney Cecilia Estolano at (213) 978-8209. Either she or another member of this office will be available when you consider this matter to answer any questions you may have. The City Attorney's Office looks forward to receiving the Committees' directions regarding the form of a proposed superstore ordinance.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By

TERREE BOWERS
Chief Deputy City Attorney

TAB:CVE:pat (96915)



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